

Dealing with Commercial Entities: Selected Export Control Issues



2003 ECCO Training Seminar

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Roadmap



- Focus: Lab Interactions with Commercial Enterprises
- Hot Export Control Topics for Commercial Entities And How These Concerns May Impact Dealings with Labs
- Case Study
- Discussion

Export Control Concerns of Commercial Entities

- Foreign trade control efforts often focused, at least initially, on two areas
 - Sanctioned Countries
 - Restricted Party List-Based Programs (driven by anti-terrorism concerns)
- Generally not a concern in the context of Lab dealings with commercial entities

Export Control Concerns of Commercial Entities

- Deemed Exports
 - Transfers to Foreign Entities/Affiliates
 - Foreign National Employees

Export Control Concerns of Commercial Entities



- Global Computer Networks
 - Intranets, Shared Drives, Access Controls
 - Access by Foreign Entities/Affiliates
 - Access by Foreign National Employees

Export Control Concerns of Commercial Entities

- Export Classification of Products or Technologies That Are Purchased or Licensed
 - Concern with Possible Need for Licensing for Initial Transfer
 - Also Concern with What Restrictions Follow the Items
 - This Concern Traditionally Driven by Rights to Reexport or Sublicense
 - Now Intensified by Concerns over Deemed Exports and Global Computer Networks

Export Control Concerns of Commercial Entities

- Export Control Status of Technologies That Are Licensed or Otherwise Received
 - Public Availability
 - Fundamental Research
 - License Exceptions

Export Control Concerns of Commercial Entities

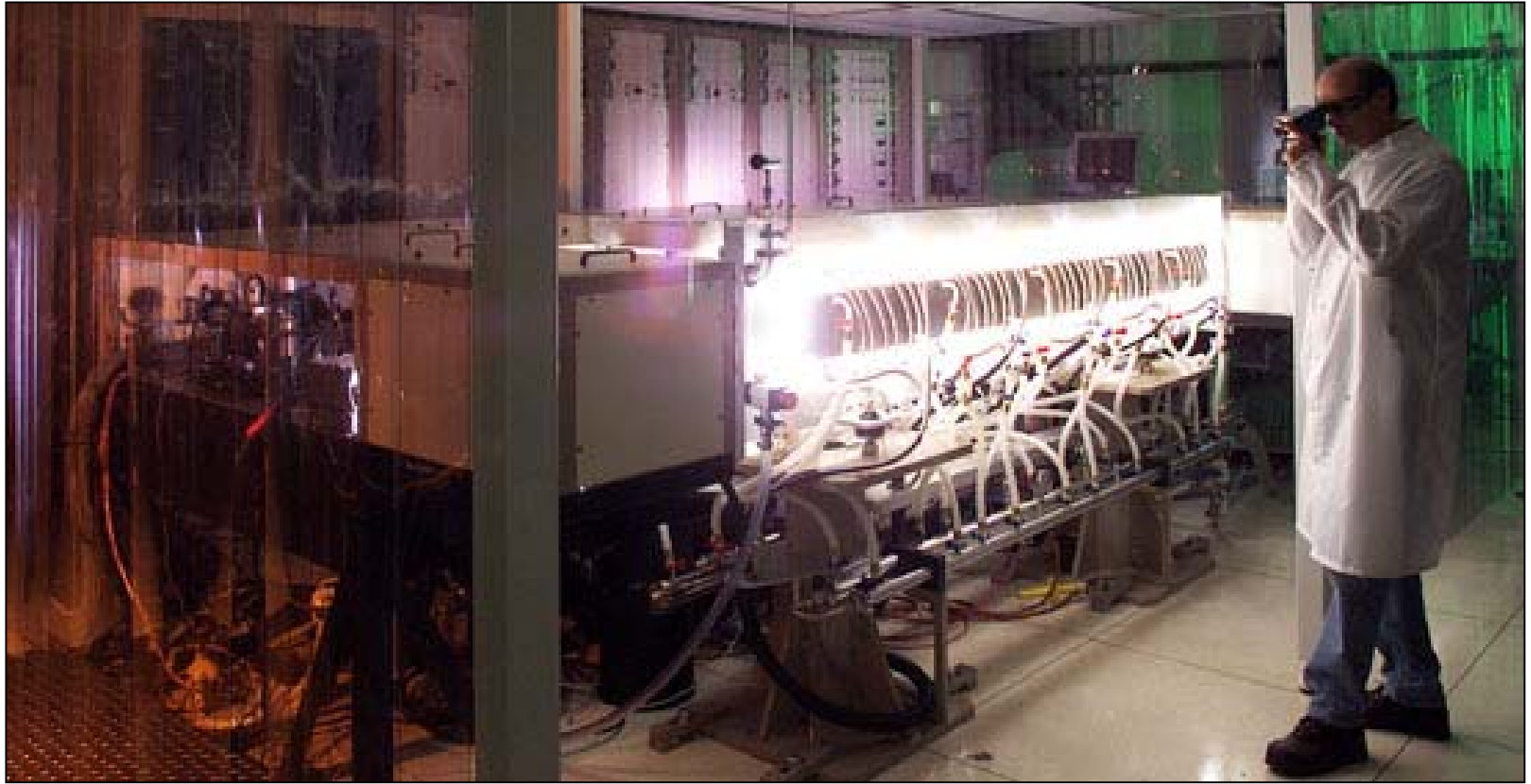
- Any other control schemes applicable by virtue of Lab's status or characteristics or potential end uses of products and technology to be transferred?
 - International Traffic in Arms Regulations
 - Items “specifically designed, developed, configured, adapted, or modified for a military application.”
 - Nuclear Regulatory Commission Controls
 - Department of Energy Controls

Export Control Concerns of Commercial Entities

- **More Sophisticated Companies**
 - Might ask about need for export licensing
 - Might ask for export classification of items being transferred
 - Might ask about availability of license exceptions
- **Less Sophisticated Companies**
 - Won't know what to ask
 - Assume you have taken care of everything because you are a national lab
 - Might even assume export controls don't apply

HYPOTHETICAL CASE STUDY

Lasers and Laser Technology



CASE STUDY

- Project involving Lab X and Company Y
- Company Y is an Indian company
- Lab X is to build and export two lasers to Company Y and license certain technology to Company Y

CASE STUDY



- Two Agreements:
 - **Work for Others Agreement.** Statement of Work: Design and Construction of 2 Lasers for Delivery to Company Y. Lab X responsible for design, fabrication, testing, and installation.
 - **Non-Exclusive License Agreement.** Lab X holds patents covering certain laser technology. Grants Company Y non-exclusive rights to use products for internal purposes at site in India. Extends option that would entitle Company Y to build and use 2 more lasers.

CASE STUDY

- Company Y asks for representation that lasers and technology may be exported to India without the need for an export license.
- Specifically requests the export classification of the lasers and the technology to be disclosed.

CASE STUDY

- Start with classifying the product.
- Neodymium-Doped Lasers
- Identify Potentially Relevant ECCNs
- Identify Relevant Technical Specifications and Performance Characteristics of the Lasers

Neodymium-Doped Laser

General Laser Type	Solid State
Tunable?	No
Material	Yttrium Aluminium Garnet (Nd:YAG)
Pulse-excited or continuously excited	Pulse-excited
Q-switched or non-Q-switched	Q-switched
Output wavelength	1 100 nm
Pulse duration	1 ns
Pulsed energy	2 J
Output Mode	Multiple-Transverse Mode
Average Output Power	25 W
Peak Power	100 MW

CASE STUDY

- Then consider the potentially applicable technology ECCNs.
- Consider the General Technology Note of the EAR.
- Consider whether the technology being disclosed is “required” for the production, development, or use of a controlled product.

General Technology Note

- The export of "technology" that is "required" for the "development", "production", or "use" of items on the Commerce Control List is controlled according to the provisions in each Category.
- "Technology" "required" for the "development", "production", or "use" of a controlled product remains controlled even when applicable to a product controlled at a lower level.

EAR Definition of “Required”

As applied to "technology" or "software", refers to only that portion of "technology" or "software" which is peculiarly responsible for achieving or exceeding the controlled performance levels, characteristics or functions. Such "required" "technology" or "software" may be shared by different products. For example, assume product "X" is controlled if it operates at or above 400 MHz and is not controlled if it operates below 400 MHz. If production technologies "A", "B", and "C" allow production at no more than 399 MHz, then technologies "A", "B", and "C" are not "required" to produce the controlled product "X". If technologies "A", "B", "C", "D", and "E" are used together, a manufacturer can produce product "X" that operates at or above 400 MHz. In this example, technologies "D" and "E" are "required" to make the controlled product and are themselves controlled under the General Technology Note. (See the General Technology Note.)

Availability of License Exceptions

- Is the technology properly classified other than EAR99?
- Consider applicability of License Exceptions if necessary
- In particular, License Exception TSR

Discussion



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